

File: PROCUREMENT

LEGISLATIVE ANALYSIS

~~DATA~~  
F14

Bill No. H.R. 1882 Report No. \_\_\_\_\_ Companion No. \_\_\_\_\_

Title: "Consulting Reform and Disclosure Act of 1983"

Subject: consultant reform

Amends. 5 U.S.C. §3109

Contacts: \_\_\_\_\_

Conclusion: ☒ No Agency objection

☐ Agency objection and/or needs amendment

Analysis: This bill would amend current law so as to subject federal agencies' consultant contracting procedures to severe scrutiny and centralized control.

Section 210 of the bill, apparently inserted in last Congress' version of this bill at the request of the Legislation Division, provides in effect a complete exemption for the Agency (although it is phrased in terms of intelligence information and classified information).

Accordingly, the only Agency<sup>action</sup> on this bill, if it moves at all, is to insure that the exemption remains in the bill.



STAT  
3/23/83  
(date)

17 MAR 1983 I

98TH CONGRESS  
1ST SESSION

# H. R. 1882

To amend section 3109 of title 5, United States Code, to clarify the authority for appointment and compensation of experts and consultants, to provide statutory guidelines concerning the award of contracts for the procurement of consulting services, management and professional services, and special studies and analyses, and for other purposes.

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## IN THE HOUSE OF REPRESENTATIVES

MARCH 3, 1983

Ms. FERRARO introduced the following bill; which was referred jointly to the Committees on Post Office and Civil Service and Government Operations

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## A BILL

To amend section 3109 of title 5, United States Code, to clarify the authority for appointment and compensation of experts and consultants, to provide statutory guidelines concerning the award of contracts for the procurement of consulting services, management and professional services, and special studies and analyses, and for other purposes.

- 1 *Be it enacted by the Senate and House of Representa-*
- 2 *tives of the United States of America in Congress assembled,*
- 3 That this Act may be cited as the [REDACTED]
- 4 [REDACTED]

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## STATEMENT OF FINDINGS

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SEC. 2. The Congress finds and declares that—

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(1) Federal procurement officials have not consistently complied with the laws relating to procurement activities and regulations and management guidelines in awarding contracts for the procurement of consulting services, management and professional services, and special studies and analyses;

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(2) procurement practices, insofar as they relate to the procurement of consulting services, management and professional services, and special studies and analyses, do not presently provide for (A) full and open competition, (B) the prevention of duplication or overlap among contracts, (C) adequate consideration of conflicts of interest, or (D) the public disclosure of the use and role of contractors who provide such services, studies, and analyses;

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(3) information regarding the Federal Government's use of consulting services, management and professional services, and special studies and analyses is not maintained in a manner that results in helpful or meaningful information being available to the Congress, the executive branch, or the public;

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(4) the competitive pressures of the free marketplace increase the likelihood that consulting services,

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1 management and professional services, and special  
2 studies and analyses will be provided at competitive  
3 prices;

4 (5) full and open competition in the Federal pro-  
5 curement process supports the basis of the free enter-  
6 prise system while guaranteeing maximum return on  
7 Federal procurement expenditures;

8 (6) the costs of performing governmental functions  
9 are borne by the taxpayer regardless of whether the  
10 functions are performed in the private or public sector;

11 (7) the integrity of the governmental process, es-  
12 pecially when consulting services, management and  
13 professional services, and special studies and analyses  
14 are used in the performance of governmental functions,  
15 requires full public disclosure of the use and role of  
16 contractors who perform such functions; and

17 (8) legislation and oversight is necessary to  
18 achieve the consistent policies and practices needed in  
19 Federal procurement of consulting services, manage-  
20 ment and professional services, and special studies and  
21 analyses.

22 STATEMENT OF POLICY

23 SEC. 3. It is the policy of the United States that—

1 (1) governmental policymaking and decisionmak-  
 2 ing functions should be performed by accountable Fed-  
 3 eral officials;

4 (2) the procurement of consulting services, man-  
 5 agement and professional services, and special studies  
 6 and analyses by contract should be in compliance with  
 7 applicable laws and regulations; and

8 (3) governmental functions should be accomplished  
 9 through the most economical means available while  
 10 recognizing the inherently governmental nature of cer-  
 11 tain activities.

## 12 TITLE I—APPOINTMENTS

### 13 REVISION OF SECTION 3109 OF TITLE 5

14 SEC. 101. (a) ~~SEC. 101. (a) [REDACTED]~~

15 ~~[REDACTED]~~

16 "§3109. Employment of individual experts and con-  
 17 sultants

18 "(a) For the purpose of this section—

19 "(1) ~~'[REDACTED]'~~ ~~[REDACTED]~~, as de-  
 20 ~~[REDACTED]~~ of this title, but does not include  
 21 the General Accounting Office;

22 "(2) 'appointed consultant' means an individual—

23 "(A) who has a high degree of knowledge,  
 24 skill, or experience in a particular field, and

1           “(B) whose primary function is to serve an  
2           agency in an advisory capacity in that field,  
3           rather than to perform or supervise an operating  
4           function of the agency; and

5           “(3) ‘appointed expert’ means an individual—

6           “(A) who has excellent qualifications and a  
7           high degree of attainment in a professional, scien-  
8           tific, technical, or other field,

9           “(B) who, because of such qualifications and  
10          attainment, is usually regarded as an authority, or  
11          as a practitioner of unusual competence and skill,  
12          by other individuals engaged in that field, and

13          “(C) whose primary function is to perform or  
14          supervise an operating function of an agency  
15          rather than to provide advisory services.

16          “(b) The head of an agency may appoint and fix the pay  
17          of appointed experts and consultants for temporary (not in  
18          excess of one year) or intermittent services, without regard  
19          to—

20          “(1) the provisions of this title governing appoint-  
21          ment in the competitive service; and

22          “(2) chapter 51 and subchapter III of chapter 53  
23          of this title (relating to position classification and pay  
24          rates),

1 except that the rate of pay for any individual so appointed  
 2 may not exceed the rate of basic pay payable for GS-18  
 3 unless otherwise specifically authorized by statute.

4       “(c) Positions in the Senior Executive Service may not  
 5 be filled under the authority of subsection (b) of this section.

6       “(d) The [REDACTED]  
 7 [REDACTED]  
 8 [REDACTED] and the reporting requirements of this  
 9 section, and may take such action as it considers appropriate  
 10 to assure compliance with those regulations, including audit  
 11 of individual cases, and, if necessary, suspension of the au-  
 12 thority to appoint experts and consultants. Agencies shall  
 13 comply with the requirements of the Office, including taking  
 14 any corrective action the Office may direct.

15       “(e) [REDACTED]  
 16 [REDACTED]  
 17 [REDACTED]  
 18 [REDACTED]. The reports shall be submitted at such time and in-  
 19 clude such information as the Office shall prescribe. Each  
 20 report shall include—

21               “(1) the [REDACTED]s each of the appointed ex-  
 22 perts or appointed consultants involved were employed  
 23 by the agency during the period, and

24               “(2) the [REDACTED] paid by the agency to each  
 25 of them for such work during the period.

1       “(f) In administering any personnel ceiling applicable to  
2 an agency (or unit therein) during any fiscal year, an appoint-  
3 ed expert or appointed consultant employed by that agency  
4 or unit under this section shall be counted as a fraction which  
5 is determined by dividing 2080 hours into the total number of  
6 hours the appointed expert or consultant worked for that  
7 agency or unit during that year.

8       “(g)(1) The head of each agency shall establish proce-  
9 dures for the review and approval of—

10           “(A) any determination relating to the need for  
11 the services of an appointed expert or appointed con-  
12 sultant under this section; and

13           “(B) the appointment of each appointed expert or  
14 appointed consultant.

15       “(2) In any case in which need for the services of an  
16 appointed expert or consultant is found to be justified, under  
17 this section, no action may be initiated to obtain those serv-  
18 ices by contract unless it has been certified that all reason-  
19 able steps have been taken to obtain those services by ap-  
20 pointment.”.

21       (b) The analysis of chapter 31 of title 5, United States  
22 Code, is amended by striking out the item relating to section  
23 3109 and inserting in lieu thereof the following new item:

“3109. Employment of individual experts and consultants.”.



1 EFFECT ON OTHER LAW

2 SEC. 102. Section 3109 of title 5, United States Code,  
3 as amended by the first section of this Act, shall supersede  
4 any statute enacted before the date of the enactment of this  
5 Act to the extent such statute grants specific authority to any  
6 agency (as defined in such section) to appoint any individual  
7 as an expert or consultant.

8 EFFECTIVE DATE

9 SEC. 103. The amendments made by this title shall take  
10 effect one hundred and eighty days after the date of the en-  
11 actment of this Act.

12 TITLE II—CONTRACTS

13 DEFINITIONS

14 SEC. 201. For purposes of this title:

15 (1) The term "[REDACTED]"  
16 "[REDACTED]" title 5, United States Code, but does  
17 not include the General Accounting Office.

18 (2) The term "contract" means (A) any agreement, in-  
19 cluding any amendment to or modification of an agreement,  
20 between the Government and a contractor for the procure-  
21 ment of goods and services, or (B) any letter authorizing a  
22 contractor to provide goods or services to the United States  
23 prior to a specification of the compensation for the provision  
24 of such goods or services.

1       (3) The term "contractor" means any person, firm, un-  
2   incorporated association, joint venture, partnership, corpora-  
3   tion or affiliates thereof, including consultants and organiza-  
4   tions thereof, which is a party to a contract with the Govern-  
5   ment.

6       (4) The term "report" means a written study, plan,  
7   evaluation, analysis, manual, or similar document, in draft or  
8   final form, which is prepared by a contractor pursuant to a  
9   contract with an agency and which is submitted—

10           (A) to such agency, or

11           (B) on behalf of such agency to any other agency  
12   of the Government,

13   but does not mean a billing document, invoice, or other rou-  
14   tine business transmittal made with respect to the contract.

15       (5) The term "consulting services" means advisory serv-  
16   ices with respect to agency administration and management  
17   or agency program management.

18       (6) The term "management and professional services"  
19   means professional services related to management and con-  
20   trol of programs, including—

21           (A) management data collection services;

22           (B) policy review and development services;

23           (C) program evaluation services;

24           (D) program management support services;

25           (E) program review and development services;

1 (F) systems engineering services; and

2 (G) other management and professional services of  
3 a similar nature which are not related to any specific  
4 program.

5 (7) The term "special study or analysis" means any  
6 nonrecurring examination of a subject which—

7 (A) is undertaken to provide greater understand-  
8 ing of relevant issues and alternatives regarding orga-  
9 nizations, policies, procedures, systems, programs, and  
10 resources; and

11 (B) leads to conclusions or recommendations with  
12 respect to planning, programing, budgeting, decision-  
13 making, or policy development.

14 Such term includes—

15 (i) any study initiated by or for the program man-  
16 agement office;

17 (ii) a cost benefit analysis, a data analysis (other  
18 than a scientific analysis), an economic study or analy-  
19 sis, an environmental assessment or impact study, a  
20 feasibility study which does not relate to construction,  
21 a legal or litigation study, a legislative study, a regula-  
22 tory study, or a socioeconomic study;

23 (iii) a geological study, a natural resources study,  
24 a scientific data study, a soil study, a water quality  
25 study, a wildlife study, or a general health study; or

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1 (iv) any similar special study or analysis.

2 PUBLICATION OF CONTRACTS

3 SEC. 202. (a) [REDACTED]

4 [REDACTED]

5 [REDACTED] management and

6 professional services, or a special study or analysis which the

7 agency estimates will result in the award of a contract in

8 [REDACTED] the agency shall [REDACTED] the Secretary

9 [REDACTED] describing such contract. The

10 Secretary of Commerce [REDACTED]

11 pursuant to this subsection [REDACTED]

12 [REDACTED] published by the Department of Commerce.

13 An agency is [REDACTED] to transmit to the Secretary of

14 Commerce [REDACTED]

15 (1) [REDACTED]

16 [REDACTED]

17 [REDACTED] or

18 (2) which is awarded due to such an unusual and

19 compelling emergency that the Government would be

20 seriously injured if prior notice of the contract were re-

21 quired to be published.

22 (b) Whenever an agency modifies a contract for consult-

23 ing services, management and professional services, or a spe-

24 cial study or analysis, and in the modification of such contract

25 increases the amount of the contract award by at least

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1 \$25,000, the agency shall transmit to the Inspector General  
2 or comparable official of such agency, or in the case of an  
3 agency which does not have an Inspector General or compa-  
4 rable official, the head of the agency or his designee, a writ-  
5 ten notice describing—

- 6 (1) the original contract;
- 7 (2) the modification being made; and
- 8 (3) the justification for the modification.

9 DISCLOSURE OF INFORMATION CONCERNING THE USE OF  
10 CONTRACTORS

11 SEC. 203. [REDACTED] prepared by a contractor pursu-  
12 ant to a contract for consulting services, management and  
13 professional services, or a special study or analysis, and each  
14 report prepared by an agency which is substantially derived  
15 from or includes substantial portions of any such report, [REDACTED]  
16 [REDACTED]

- 17 (1) the [REDACTED] address of the contrac-  
18 tor who prepared or contributed to the report;
- 19 (2) the total amount of the contract;
- 20 (3) whether the contract was awarded through  
21 competitive or noncompetitive procedures;
- 22 (4) the name of the office which, or employee  
23 who, authorized the award of the contract;
- 24 (5) in any case in which a contractor uses a sub-  
25 contractor to prepare any portion of a report for an

1 agency, the name and business address of the subcon-  
2 tractor and the amount paid to the subcontractor for  
3 the work;

4 (6) the names of all employees of the contractor,  
5 and any subcontractor, who substantially contributed to  
6 the report; and

7 (7) in any case in which an organizational conflict  
8 of interest has been determined under section 205 to  
9 exist with respect to the contract, the facts and cir-  
10 cumstances of the conflict of interest.

11 CONTRACT EVALUATION

12 SEC. 204. (a) Within one hundred and twenty days after  
13 the completion of any contract for consulting services, man-  
14 agement and professional services, or a special study or anal-  
15 ysis, the total amount of which is in excess of \$50,000, the  
16 [REDACTED] of the contract per-  
17 formance. The evaluation shall include a [REDACTED]  
18 [REDACTED] contract, including—

19 (1) the performance of the contractor, based upon  
20 the terms and specifications included in the contract;  
21 and

22 (2) any deviation by the contractor from the provi-  
23 sions of the contract originally awarded with respect to  
24 cost and time for completion of the contract and a  
25 statement of the reasons for any such deviation.

1 (b) The agency shall include the evaluation required by  
 2 subsection (a) in the records maintained by the agency re-  
 3 garding the contract and shall maintain a copy of the evalua-  
 4 tion in a central location within the agency.

5 (c) A written copy of any evaluation made under this  
 6 section shall be transmitted to the contractor concerned to-  
 7 gether with a notice stating that the contractor may, within  
 8 ten days after receipt of such copy, transmit comments to the  
 9 agency concerning such evaluation. Any such comments shall  
 10 be included in the evaluation as a supplement.

11 ~~SECTION 205. (a)(1) BEGINNING ON THE EFFECTIVE DATE OF THIS~~

12 SEC. 205. (a)(1) Beginning on the effective date of this  
 13 title and ending three years after such date, the following  
 14 subsections of this section ~~apply only to the award of con-~~  
 15 ~~tracts by the following three agencies:~~

- 16 (A) the Department of ~~Energy~~,
- 17 (B) the Department of ~~Transportation~~, and
- 18 (C) the ~~Environmental Protection Agency~~.

19 (2) Effective beginning three years after the effective  
 20 date of this Act, unless otherwise provided by law, the fol-  
 21 lowing subsections of this section shall apply to each agency.

22 (b) For purposes of this section:

23 (1) The term "organizational conflict of interest" means  
 24 any relationship or situation in which an offeror or contractor  
 25 has past, present, or anticipated interests that either directly,

1 or indirectly through a client relationship, relate to work to  
2 be performed under a contract for consulting services, man-  
3 agement and professional services, or a special study or anal-  
4 ysis, and which—

5 (A) may diminish the capacity of the offeror or  
6 contractor to give impartial, technically sound, and ob-  
7 jective assistance and advice; or

8 (B) may result in an unfair competitive advantage  
9 to the offeror or contractor;

10 but such term does not include the normal flow of benefits  
11 from the performance of the contract.

12 (2) The terms “offeror” and “contractor” include—

13 (A) a chief executive or director of the offeror or  
14 contractor, to the extent that such executive or direc-  
15 tor will or does become substantially involved in the  
16 performance of a contract entered into with an agency;  
17 and

18 (B) a consultant or subcontractor proposed to be  
19 used by the offeror or contractor in the performance of  
20 a contract entered into with an agency in any case in  
21 which such consultant or subcontractor may be per-  
22 forming services similar to the services provided by the  
23 offeror or contractor.

24 (c)(1) Whenever an offeror submits to any agency a pro-  
25 posal for a contract for consulting services, management and



1 professional services, or a special study or analysis, the of-  
2 feror shall include with such proposal—

3 (A) a statement which discloses all relevant facts  
4 relating to an existing or potential organizational con-  
5 flict of interest concerning the contract; or

6 (B) a statement certifying, to the best knowledge  
7 and belief of such offeror, that no relevant facts exist  
8 relating to such an existing or potential organizational  
9 conflict of interest.

10 (2) Any consultant or subcontractor which any such of-  
11 feror proposes to use in the performance of a contract de-  
12 scribed in paragraph (1) shall also submit a statement con-  
13 taining the information required by paragraph (1) to the  
14 agency receiving the proposal.

15 (3) In any case in which a contract described in para-  
16 graph (1) has been entered into by an agency and a modifica-  
17 tion of the contract becomes necessary, the contractor and  
18 any consultant or subcontractor used by the offeror in the  
19 performance of the contract shall submit to the agency—

20 (A) the same type of statement with respect to  
21 such modification as required by paragraph (1) with re-  
22 spect to a contract; or

23 (B) a revision of any statement submitted under  
24 paragraph (1) which relates to any potential organiza-  
25 tional conflict of interest concerning such modification.

1       (4) Each contractor, consultant, and subcontractor  
2 which has submitted a statement under this subsection shall  
3 submit, on a timely basis, revisions of such statement as may  
4 be necessary to clearly and accurately reflect any changes in  
5 circumstances relating to an existing or potential organiza-  
6 tional conflict of interest arising after the statement was  
7 made or last revised.

8       (d) The head of each agency to which this section ap-  
9 plies shall establish or designate an office to administer the  
10 provisions of this section with respect to contract proposals  
11 and contracts of the agency. The head of each such office  
12 shall evaluate each statement received pursuant to subsection  
13 (c) to determine whether an organizational conflict of interest  
14 or the appearance of such a conflict exists with respect to the  
15 contract for which the statement is submitted. In making  
16 such evaluation, the head of such office shall—

17               (1) consider whether—

18                       (A) the offeror, contractor, consultant, or  
19 subcontractor has conflicting roles or interests  
20 which might bias the judgment of the offeror, con-  
21 tractor, consultant, or subcontractor concerning  
22 the work to be performed pursuant to the con-  
23 tract; or

1 (B) the offeror or contractor will have an  
2 unfair advantage in the performance of the con-  
3 tract; and

4 (2) pay particular attention to proposed contrac-  
5 tual requirements which call for the provision of  
6 advice, evaluation, or other actions which will have a  
7 direct effect on future decisions of the agency relating  
8 to contracts, procurement, research and development  
9 programs, production, or regulatory activities.

10 (e) Whenever the head of an office established or desig-  
11 nated under subsection (d) determines that an organizational  
12 conflict of interest or that the appearance of such a conflict  
13 exists with respect to a contract for consulting services, man-  
14 agement and professional services, or a special study or anal-  
15 ysis, or a proposal for such a contract, he shall transmit a  
16 notice of his determination to the offeror or contractor in-  
17 volved. Within ten days after the receipt of such notice, the  
18 offeror or contractor may transmit written comments to the  
19 head of the office concerning the determination or may trans-  
20 mit such comments to the head of the agency with a request  
21 that the head of the agency review such determination.  
22 Within thirty days after receiving such a request, the head of  
23 the agency shall review the determination of the head of the  
24 office and shall issue a written decision. In conducting such  
25 review, the head of the agency may request the offeror or

1 contractor to provide additional information concerning the  
2 issues involved. The head of the agency shall transmit a copy  
3 of his decision under this subsection to the offeror or contrac-  
4 tor and the head of the office.

5 (f) If, prior to the award of a contract for consulting  
6 services, management or professional services, or a special  
7 study or analysis, the head of the office determines that an  
8 organizational conflict of interest or the appearance of such a  
9 conflict exists with respect to the contract, and such determi-  
10 nation is not reversed by the head of the agency—

11 (1) the agency shall disqualify the offeror from eli-  
12 gibility for award of the contract or, in the case of an  
13 organizational conflict of interest or the appearance of  
14 such a conflict involving a consultant or subcontractor  
15 proposed to be used by the offeror in the performance  
16 of the contract, shall prohibit the offeror from using the  
17 services of such consultant or subcontractor;

18 (2) the agency shall include in the contract award-  
19 ed to the offeror such conditions as the agency deter-  
20 mines would avoid an organizational conflict of interest  
21 or the appearance of such a conflict involving such of-  
22 feror or any consultant or subcontractor; or

23 (3) in any case in which the agency determines  
24 that—

1 (A) the facts and circumstances surrounding  
2 the contract necessitate immediate action; and

3 (B) the agency is unable to obtain the serv-  
4 ices to be performed pursuant to the contract from  
5 any other person other than the offeror, consult-  
6 ant, or subcontractor involved in the organization-  
7 al conflict of interest or the appearance of such a  
8 conflict,

9 the agency may award the contract to the offeror if the  
10 agency includes in the records maintained by the  
11 agency on the contract, makes available to the public,  
12 and transmits to each committee of the Senate and the  
13 House of Representatives having legislative jurisdiction  
14 over the agency, a complete statement of the relevant  
15 facts disclosed by the offeror, consultant, or subcon-  
16 tractor pursuant to subsection (c), or otherwise known  
17 or made available to the agency.

18 (g)(1) If, after the agency has entered into a contract for  
19 consulting services, management and professional services, or  
20 a special study or analysis, the head of an office established  
21 or designated in the agency under subsection (d) determines  
22 that an organizational conflict of interest or the appearance  
23 of such a conflict exists with respect to the contract, and such  
24 determination is not reversed by the head of the agency, the  
25 agency shall—

1 (A) terminate the contract; or

2 (B) in any case in which termination is not in the  
3 best interest of the Government, modify the contract to  
4 the extent necessary to prevent or mitigate to the  
5 greatest extent possible the conflict or the appearance  
6 of the conflict and include in the records maintained by  
7 the agency on the contract, make available to the  
8 public, and transmit to each committee of the Senate  
9 and the House of Representatives having legislative ju-  
10 risdiction over the agency, a complete statement of the  
11 relevant facts determined to exist regarding the offeror,  
12 consultant, or subcontractor.

13 (2)(A) Except as provided in subparagraph (B), a con-  
14 tractor who has entered into a contract with an agency for  
15 consulting services, management and professional services, or  
16 a special study or analysis, or a consultant or a subcontractor  
17 to any such contractor shall have no claim against the United  
18 States for damages as a result of an action of an agency  
19 under paragraph (1) (other than a claim specified pursuant to  
20 a convenience clause in the contract), but such a contractor,  
21 consultant, or subcontractor may have a claim against the  
22 United States for compensation for work performed prior to  
23 such agency action.

24 (B) A contractor who has entered into a contract with  
25 an agency for consulting services, management and profes-

1 sional services, or a special study or analysis, or a consultant  
2 or a subcontractor to any such contractor shall have no claim  
3 for compensation for work performed prior to an agency  
4 action under paragraph (1) if it is determined that such con-  
5 tractor's, consultant's, or subcontractor's failure to complete-  
6 ly disclose the relevant facts under subsection (b) precluded a  
7 determination of the existence of an organizational conflict of  
8 interest or the appearance of such a conflict involving such  
9 contractor, consultant, or subcontractor prior to the award of  
10 the contract.

11 (h) Two years after the effective date of this title, the  
12 Comptroller General of the United States, in conjunction  
13 with the Director of the Office of Management and Budget,  
14 shall commence an evaluation of the operations of the provi-  
15 sions of this section, and, within nine months after the com-  
16 mencement of such evaluation, shall prepare and transmit a  
17 report to the Congress concerning the result of such evalua-  
18 tion, including recommendations regarding—

19 (1) the continuation, modification, or termination,  
20 of the provisions of this section; and

21 (2) the extension of such provisions to all agen-  
22 cies.

23 **BUDGET IDENTIFICATION AND JUSTIFICATION**

24 **SEC. 206. (a)** [REDACTED]  
25 [REDACTED]

1 year submitted to the Director of the Office of Management  
2 and Budget pursuant to section 1108 of title 31, United  
3 States Code, [REDACTED]  
4 [REDACTED] ment in such fiscal year. The state-  
5 ment shall identify such amounts according to the same sub-  
6 functional categories to be used by the President in the sub-  
7 mission of the budget for such fiscal year pursuant to section  
8 1105 of title 31, United States Code, and, within each such  
9 category, shall identify such amounts according to classifica-  
10 tions for—

11 (1) procurement of consulting services, manage-  
12 ment and professional services, and special studies and  
13 analyses;

14 (2) procurement of other services; and

15 (3) all other procurement activities.

16 (b) The budget transmitted by the President to the Con-  
17 gress for each fiscal year under section 1105 of title 31,  
18 United States Code, shall set forth separately, within each  
19 subfunctional category used in such budget—

20 (1) requests for new budget authority for, and es-  
21 timates of outlays by, each agency for—

22 (A) procurement of consulting services, man-  
23 agement and professional services, and special  
24 studies and analyses;

25 (B) procurement of other services; and



- 1 (C) all other procurement activities;
- 2 (2) an analysis of each request for new budget au-
- 3 thority and of the estimates of outlays referred to in
- 4 paragraph (1); and
- 5 (3) a statement justifying the need for each such
- 6 request and estimate.
- 7 (c) Any revision of any request or estimate included in
- 8 the budget for any fiscal year pursuant to subsection (b)(1)
- 9 shall be promptly transmitted to the Congress, and shall be
- 10 accompanied by an analysis and statement required by sub-
- 11 section (b)(2) which reflects the revision made by the Presi-
- 12 dent.

### 13 FEDERAL PROCUREMENT DATA SYSTEM

14 SEC. 207. (a)(1) The ~~Department of Defense Federal Procure-~~  
 15 ~~ment Data System shall be established as a system for the collection~~  
 16 ~~and dissemination of information regarding all contracts en-~~  
 17 ~~tered into by each agency.~~

18 (2) The system shall classify every contract or contract  
 19 modification for an amount in excess of \$10,000 as for—

- 20 (A) procurement of consulting services, manage-
- 21 ment and professional services, and special studies and
- 22 analyses;
- 23 (B) procurement of other services; or
- 24 (C) all other procurement activities.

1       (3) In addition, the system shall include for each such  
2 contract or contract modification—

3           (A) the name of the agency awarding the con-  
4 tract;

5           (B) an identification number or other designation  
6 for the contract or modification, as the case may be;

7           (C) the name of the contracting office of the  
8 agency which awarded the contract;

9           (D) the name of the contractor;

10          (E) whether the contractor is a small business or  
11 a minority business;

12          (F) the date on which the contract award or the  
13 modification was made;

14          (G) the city, county, State, or country in which  
15 the work under the contract will be performed;

16          (H) a brief description of the work to be per-  
17 formed under the contract;

18          (I) the total dollars payable by the Government  
19 under the contract;

20          (J) the estimated completion date of the contract;

21          (K) whether before the awarding of the contract a  
22 comparison was made of (i) the costs to the agency of  
23 directly performing the function covered by the con-  
24 tract with (ii) the costs of contracting with non-Federal  
25 entities for the performance of such function;

1           (L) the type of solicitation and procurement proc-  
2           ess which was applied in awarding the contract;

3           (M) the type of contract, such as a cost reimburse-  
4           ment contract or fixed price contract; and

5           (N) if applicable, the negotiation authority used to  
6           award the contract under the provisions of section  
7           2304(a) of title 10, United States Code, or section  
8           302(c) of the Federal Property and Administrative  
9           Services Act of 1949.

10          (b)(1) Consistent with otherwise applicable law, the  
11          Administrator for Federal Procurement Policy shall make in-  
12          formation within the system available, on request, to the  
13          Congress, the various agencies, and the public.

14          (2) The Administrator for Federal Procurement Policy  
15          shall prepare and transmit to the Congress quarterly and  
16          annual reports regarding the information maintained on each  
17          agency within the system.

18          (c)(1) Each agency shall provide such information to the  
19          Administrator for Federal Procurement Policy as may be  
20          necessary to assure that the data concerning the agency in  
21          the system and in the reports under subsection (b)(2) is cur-  
22          rent, accurate, and complete.

23          (2) Under regulations prescribed by the Administrator—

27

1 (A) each agency shall establish procedures to  
 2 assure that such information is timely collected and re-  
 3 ported within the agency;

4 (B) each agency shall provide such information for  
 5 any calendar quarter not later than thirty days after  
 6 the close of that quarter; and

7 (C) within thirty days after receiving information  
 8 provided by an agency under subparagraph (B), the  
 9 Administrator shall enter that information into the  
 10 system.

#### 11 PUBLIC AVAILABILITY

12 SEC. 208. (a)(1) [REDACTED]  
 13 [REDACTED]  
 14 [REDACTED] the twelve-month period immediately pre-  
 15 ceding the month in which the list is prepared and [REDACTED]  
 16 [REDACTED] of all contracts entered into by the agency for which per-  
 17 [REDACTED] time of the prepara-  
 18 tion of such list. The lists shall be updated on a quarterly  
 19 basis and shall include, for each such contract—

20 (A) the contract identification number assigned by  
 21 the agency;

22 (B) the contractor's name;

23 (C) the date of award and the estimated comple-  
 24 tion date;

1 (D) the original and current amounts to be paid  
2 by the agency under the contract; and

3 (E) a brief description of the work to be per-  
4 formed.

5 (2) Every agency shall prepare and maintain a written  
6 statement justifying the need for each contract for consulting  
7 services, management and professional services, or a special  
8 study or analysis which is entered into by the agency. The  
9 statement shall include the name of the Government employ-  
10 ee who authorized the award of the contract and the Govern-  
11 ment employee who is responsible for the administration of  
12 the contract.

13 (3) Each agency shall permit the public to inspect and  
14 make copies of the list prepared under paragraph (1) and the  
15 statements prepared under paragraph (2). The agency may  
16 make a reasonable charge for the costs of making such  
17 copies.

18 (b)(1) [REDACTED]  
19 [REDACTED]  
20 [REDACTED]  
21 [REDACTED]  
22 [REDACTED]

23 (A) all contracts shall be considered public infor-  
24 mation and shall be available to the public upon re-  
25 quest; and

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1 (B) the following information shall be available to  
2 the public for every contract for consulting services,  
3 management and professional services, or a special  
4 study or analysis:

5 (i) the name and qualifications of any person-  
6 nel designated in the contract; and

7 (ii) the sole source justification if such con-  
8 tract was awarded on a sole source basis.

9 (2) Paragraph (1) does not require an agency to make  
10 technical proposals available to the public.

11 **PERFORMANCE APPRAISAL**

12 **SEC. 208.** (a) Section 4313 of title 5, United States  
13 Code, is amended by redesignating paragraphs (4) and (5) as  
14 paragraphs (5) and (6), respectively, and by inserting after  
15 paragraph (3) the following new paragraph:

16 “(4) compliance with rules, regulations, and pro-  
17 cedures applicable to the contracting out of agency  
18 functions, and furtherance of the policy set forth in sec-  
19 tion 3 of the Consulting Reform Act of 1983;”.

20 (b) Section 5402(b)(2)(B) of title 5, United States Code,  
21 is amended by striking out “and” at the end of clause (iii), by  
22 redesignating clause (iv) as clause (v), and by inserting after  
23 clause (iii) the following new clause:

24 “(iv) compliance with rules, regulations, and  
25 procedures applicable to the contracting out of

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E 824

## CONGRESSIONAL RECORD — Extensions of Remarks

March 3, 1983

risk newborns with life-threatening congenital impairments may also be the innocent victims of negligent treatment. Lack of appropriate care and services would be unthinkable, if prescribed for nonhandicapped infants.

There is a compelling need to provide immediate and more effective protections for such newborns. We must insure that they are not denied nutrition, medically indicated treatment, and appropriate general care and social services.

The causes of child abuse and neglect are numerous and complex. The solution of this national social problem will not be a simple one. Nonetheless, through stronger preventive measures that are based on a better understanding of underlying causes, we must continue our efforts to reduce significantly the growing incidence and severity of child abuse and neglect cases.

I am pleased, therefore, to join the distinguished chairman of the Select Education Subcommittee, Mr. MURPHY of Pennsylvania, as an original cosponsor of the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983. I wish to commend my colleague for his longstanding leadership in this area and to compliment him on his efforts to bring before us a measure that should enjoy strong, bipartisan support.

What are the major provisions incorporated in the 1983 amendments?

1. All activities authorized under title I (child abuse prevention and treatment) and title II (adoption opportunities) of the present act are extended from October 1, 1984 through September 30, 1987;

2. Fiscal year 1984 authorizations of appropriations for title I activities, programs relating to the sexual abuse of children, and title II of the act are set at \$18,000,000, \$3,000,000, and \$2,000,000, respectively. This represents a slight increase over current funding levels. In addition, all authorizations are increased by 5 percent for each of the succeeding fiscal years.

3. The Secretary of Health and Human Services, through the National Center on Child Abuse and Neglect, is required to conduct a current study of the national incidence and severity of the child abuse, including those cases involving the denial of basic care and services to infants at risk with life-threatening handicapping conditions. Based on the findings of this updated study, the Secretary must submit to the Congress, within 2 years of enactment of this legislation, recommendations for additional legislative or regulatory changes;

4. The Secretary, by way of the National Center on Child Abuse and Neglect, must provide technical assistance and training to assist States in developing and implementing new or improved procedures to be followed by child protective service agencies, health care facilities, health and allied

medical professionals, social service providers, and courts of competent jurisdiction to better insure that nutrition, medically indicated treatment, general care, and appropriate services are provided to newborns with life-threatening impairments;

5. States, as a condition for future State grant awards, must have implemented, within 1 year after enactment of the amendments of 1983, procedures designed to more fully protect the rights of such infants. These new or improved State procedures or protocols must include a means by which any interested person may report any known or suspected case of the denial of nutrition, medical treatment, or general care to an infant at risk with life-threatening, congenital impairments;

6. The definition of "sexual abuse and exploitation" is broadened to make it consistent with the recent Supreme Court decision in *New York v. Ferber*;

7. Title II (adoption opportunities) is amended to require that the Secretary of Health and Human Services review all model adoption legislation and procedures for the purpose of assisting the States in facilitating and expanding adoption opportunities for infants at risk with life-threatening congenital impairments; and

8. Services and protections assured under section 504 of the Rehabilitation Act of 1973 must be continued.

Building on the existing legislative framework, the Child Abuse Prevention and Treatment and Adoption Reform Act Amendments of 1983 are designed to establish a stronger Federal-State-local partnership to insure that the very special needs of infants like the "Bloomington baby" are fully met. I believe that this measure represents an important, positive, and effective step forward in preventing future "Bloomington baby" tragedies.●

## CONSULTING REFORM AND DISCLOSURE ACT OF 1983

HON. GERALDINE A. FERRARO

OF NEW YORK

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 3, 1983

● Ms. FERRARO. Mr. Speaker, today I am introducing the Consulting Reform and Disclosure Act of 1983. I believe that the 22 year history of agency mismanagement of consulting services contained in 30 critical General Accounting Office reports demonstrates why this legislation is necessary. In 1980, a GAO report cited serious and pervasive problems in consulting contracts in six civilian agencies. The GAO report which I received in 1981 found that several of the Department of Defense's management support services contracts reviewed "have preempted DOD's prerogative in directing national defense and in management and direction of the Armed Services."

Mr. Speaker, this legislation is necessary because the problems with consulting type contracts have not been corrected. The GAO supports this legislation even though it generally opposes legislative solutions to administrative problems.

When I held a hearing on identical legislation last Congress, the administration refused to testify. Instead it contended that adequate safeguards are "already prescribed by statute or by OMB \* \* \*."

However, at the same time the administration was making this contention, they were pressing for legislation to eliminate statutory requirements for advance budget justification and an Inspector General evaluation of agency progress in instituting management controls over consulting service arrangements.

These two concurrent events emphasize the need for permanent law requiring disclosure of consulting contract information. The best way to eliminate waste is to make sure it is not hidden from the public. That is the purpose of my bill.●

## THE 100TH ANNIVERSARY OF THE CIVIL SERVICE SYSTEM

HON. HAROLD E. FORD

OF TENNESSEE

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 3, 1983

● Mr. FORD of Tennessee. Mr. Speaker, after reading the February 1 issue of the *Public Administration Times*, I am compelled to speak out on the fortitude and excellence of the civil service system on this, its 100th anniversary. Throughout my years in the U.S. Congress, I have found civil servants to be selfless and dedicated individuals. They are a source of pride for all of us who value the merit system under which they work. In addition to praising the high standards that the merit system inspires, I would also like to take exception to those who by making political appointments and innuendo dare to corrupt the legitimacy, and thereby, the effectiveness of the civil service system.

In the beginning stages, only 10 percent of the Federal workers were a part of the civil service system, which was established by the Pendleton Act of 1883. With succeeding Presidents, their numbers increased, until civil servants were a full 70 percent of the Government work force by the time of the Great Depression.

The numbers of the civil servants continued to grow during the administration of President Franklin D. Roosevelt, as World War II signaled a greater need for Government workers. Because of this high demand for civil servants during this period, there was pressure to exempt wartime emergency jobs from the existing requirements, but these efforts were resisted.



March 3, 1983

## CONGRESSIONAL RECORD — Extensions of Remarks

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"(d) A cash award to, and expenses for the honorary recognition of, any employee covered by the performance management and recognition system may be paid from the fund or appropriation available to the activity primarily benefiting, or the various activities benefiting, from the suggestion, invention, superior accomplishment, or other meritorious efforts of the employee. The head of the agency concerned shall determine the amount to be contributed by each activity to any agency cash award under subsection (a) of this section. The President shall determine the amount to be contributed by each activity to a Presidential award under subsection (b) of this section.

"(e) A cash award under subsection (a) may not exceed 20 percent of the basic pay of the employee involved.

"(f) The President or the head of an agency may pay a cash award under this section notwithstanding the death or separation from the service of an employee, if the suggestion, invention, superior accomplishment, or other meritorious effort of the employee for which the award is proposed was made or performed while the employee was covered by the performance management and recognition system.

**"§ 5405. Report**

"The Office of Personnel Management shall submit an annual report to the President and each House of Congress evaluating the effectiveness of the performance management and recognition system. Each such report shall be prepared after consultation with the respective heads of a sufficient range of agencies so as to permit an adequate basis for making a meaningful evaluation.

**"§ 5406. Regulations**

"The Office of Personnel Management shall prescribe regulations to carry out the purpose of this chapter."

(b)(1) Title 5, United States Code, is amended—

(A) in sections 4501(2)(A), 5332(a), 5334(f), and 5336(c), by striking out "the merit pay system established under section 5402" each place it appears and inserting in lieu thereof "the performance management and recognition system established under section 5403";

(B) in section 5361(5), by striking out "merit pay system" and inserting in lieu thereof "performance management and recognition system"; and

(C) in section 5948(g)(1)(C), by striking out "Merit Pay System" and inserting in lieu thereof "performance management and recognition system".

(2) Section 1602 of title 10, United States Code, and section 5(b) of the General Accounting Office Personnel Act of 1980 (31 U.S.C. 52-4(b)) are each amended by striking out "5401(a)" and inserting in lieu thereof "5401".

**PERIODIC STEP-INCREASE CONFORMING AMENDMENT**

SEC. 3. Section 5335 of title 5, United States Code, is amended by striking out subsection (e) and inserting in lieu thereof the following:

"(e) This section does not apply to the pay of an individual appointed by the President, by and with the advice and consent of the Senate.

"(f) This section applies to individuals covered by the performance management and recognition system under chapter 54 of this title, as provided in section 5403(c)(2) of this title."

**PERFORMANCE APPRAISAL SYSTEM CONFORMING AMENDMENTS**

SEC. 4. (a) Chapter 43 of title 5, United States Code, relating to performance ap-

praisals, is amended by inserting after section 4302 the following new section:

"§4302a. Establishment of performance appraisal systems for performance management and recognition system employees

"(a) Each agency shall develop a performance appraisal system for employees covered by the performance management and recognition system established under section 5403 of this title which—

"(1) provides for periodic appraisals of job performance;

"(2) requires that the supervising official consult with the employee before establishing performance standards; and

"(3) uses the results of performance appraisals as a basis for setting the base pay and performance awards for an employee in accordance with section 5403 of this title.

"(b) Under regulations which the Office of Personnel Management shall prescribe, each such performance appraisal system shall provide for—

"(1) 5 levels of performance ratings as follows:

"(A) 2 levels which are below fully successful;

"(B) a fully successful level; and

"(C) 2 levels which are above fully successful;

"(2) establishing performance standards and critical elements which will, to the maximum extent feasible, permit the accurate evaluation of job performance;

"(3) at the beginning of each appraisal period, communicating to each employee covered by the performance management and recognition system the performance standards and critical elements of the employee's position;

"(4) during the appraisal period, evaluating each such employee on the basis of such standards;

"(5) assisting such employees in improving less than fully successful performance;

"(6) reassigning, reducing in grade, or removing such employees who continually perform below fully successful, after providing an opportunity to provide fully successful performance; and

"(7) making base pay increase and performance award decisions as a result of annual performance appraisals made under this section.

"(c) Appraisals of performance under this section—

"(1) shall take into account individual performance,

"(2) may take into account organizational accomplishment, and

"(3) shall take into account such factors as—

"(A) any improvement in efficiency, productivity, and quality of work or service, including any significant reduction in paperwork;

"(B) cost efficiency;

"(C) timeliness of performance; and

"(D) other indications of the effectiveness, productivity, and quality of performance of the employee or other employees for whom the employee is responsible; and

"(4) shall be subject to review only in accordance with and to the extent provided by procedures established by the head of the agency.

"(d) The Office of Personnel Management may not prescribe, or require agencies to prescribe—

"(1) any preestablished distribution of levels of performance ratings among employees covered under chapter 54 of this title; or

"(2) any specific performance standard or element."

(b) The table of sections for chapter 43 of title 5, United States Code, is amended by

inserting after the item relating to section 4302 the following new item:

"4302a. Establishment of performance appraisal systems for performance management and recognition system employees."

**EFFECTIVE DATE; SAVINGS PROVISIONS; CONTINUATION OF AMENDMENTS**

SEC. 5. (a) The amendments made by this Act shall take effect on the first day of the first applicable pay period commencing after the first September 30th following the date of the enactment of this Act.

(b)(1) An employee whose position was covered by the merit pay system immediately before the effective date of this Act but is determined not to be covered by the performance management and recognition system as a result of this Act shall be converted on such effective date to the General Schedule in accordance with regulations issued by the Office of Personnel Management pursuant to section 5334(a) of this title.

(2) The rate of basic pay for any employee whose position was covered by the merit pay system immediately before the effective date of this Act and is determined to be under the performance management and recognition system as a result of this Act shall be at least equal to the rate of basic pay payable for the position held by such employee immediately before the effective date of this Act.

(c)(1) The amendments made by this Act shall continue to have effect unless, during the first period of 60 calendar days of continuous session of the Congress beginning after 5 years after the effective date of such amendments, a concurrent resolution is introduced and adopted by the Congress disapproving the continuation of the performance management and recognition system. Such amendments shall cease to have effect on the first day of the first fiscal year beginning after the date of the adoption of such concurrent resolution.

(2) The continuity of a session is broken only by an adjournment of the Congress sine die, and the days on which either House is not in session because of an adjournment of more than 3 days to a day certain are excluded in the computation of the 60-day period.●

**THE CHILD ABUSE PREVENTION AND TREATMENT AND ADOPTION REFORM ACT AMENDMENTS OF 1983****HON. JOHN N. ERLNBORN**

OF ILLINOIS

IN THE HOUSE OF REPRESENTATIVES

Thursday, March 3, 1983

● Mr. ERLNBORN. Mr. Speaker, one of the greatest human tragedies is the neglect, maltreatment, and abuse of children. The public has become more aware of and deeply disturbed by reports of the growing and senseless incidence of child abuse and neglect. In my view, the ultimate child abuse is when the life of a helpless child is taken—often by a parent, relative, family friend, or one in whose care the child has been placed.

The recent "Bloomington baby" or "Baby Doe" tragedy added a shocking new dimension to the problem. We cannot overlook the intolerable fact that, within health care facilities, at-